

City Attorney's Office Highlights

August 8, 2006: Kroll Report Released to the Public

At a public meeting of the City Council, Kroll, Inc. released its long-overdue report on the City of San Diego's financial disclosure practices, pension underfunding scheme, wastewater overcharges, and wrong doing by City officials, retirement board members and former City employees. The report substantiated the City Attorney's alleges that laws were violated from the San Diego City Charter, the State of California, the San Diego Municipal Code and the Securities and Exchange Commission. The report fell short of analyzing the full extent of the wrong doing.

August 3, 2006: Federal Court Grants Relief for Energy Ratepayers

The City of San Diego played the lead role in winning a Ninth Circuit Court of Appeal ruling that ordered the Federal Energy Regulatory Commission (FERC) to go back to the beginning of 2000 when considering refunds for unjust price increases foisted on energy ratepayers. FERC had wanted to only look at the period after October 2, 2000. The Appeal Court decision could result in an additional \$25 billion in refunds to utilities across California.

July 28, 2006: Interim Report #10 to Auditor Related to Improper Billing Practices by the City Attorney's Office for Service Level Agreements with City of San Diego Water and Wastewater Departments.

Interim Report #10 was issued after an internal investigation by the City Attorney's Office into billing practices perpetuated by former officeholders that possibly overcharged the City's Water and Wastewater Departments by averaging hours worked by attorneys in the City Attorney's Office. A directive to inform the City's outside auditor, KPMG, was carried out and the practices were halted in early January 2005, shortly after City Attorney Aguirre took office. It was discovered on July 25, 2006 that some departments had continued the practice, prompting an immediate investigation.

July 27, 2006: Lawsuit Filed Against Vinson & Elkins LLP

In Superior Court, the City Attorney's office filed a lawsuit against Vinson & Elkins LLP, in a contingency arrangement with law firms Bryan C. Vess APC, and Stanford & Associates. The lawsuit calls for payment of general and punitive damages as well as the costs of the lawsuit, which could total over \$10 million.

July 26, 2006: Interim Report #9 on Breach of Contract, Fiduciary Duties, and Professional Negligence by Vinson & Elkins LLP

Interim Report #9 outlined the failings of outside consultants Vinson & Elkins LLP to adequately and properly investigate the financial disclosure practices of City officials, the actions of the San Diego City Employee's Retirement System (SDCERS) Board of Trustees in pension underfunding negotiations, and in representing the City of San Diego before the U.S. Securities and Exchange Commission (SEC). The report included evidence that Vinson & Elkins was

aware of wrongdoing and did not disclose it to the Mayor and City Council. Vinson & Elkins was paid \$6.2 million for its investigation, which was deemed below professional standards by the City's outside auditor, KMPG, and the SEC.

July 10, 2006: Pension Case Headed for Jury Trial

The City Attorney's lawsuit against the San Diego City Employees Retirement System is headed for a jury trial on October 6, 2006. A Superior Court judge sent it forward after determining that there were triable issues of fact. The case centers on the legality of pension benefits granted by the City in 1996 and 2002.

July 12, 2006: Night Clubs Plea 'No Contest;' Pay Fines

Two local night clubs have been prosecuted by the City Attorney's Code Enforcement Unit for St. Patrick's Day occupancy violations. Hennessey's Tavern and The Ould Sod Irish Pub will each pay \$1,720 in fines and be subject to probation for three years for packing customers into their bars far beyond legal limits.

July 11, 2006: City Attorney Initiated False Claims Act Investigation

The City Attorney has initiated an investigation into the claims for payment submitted by Kroll Inc. which has been paid \$20 million by the City and has yet to issue a report. Kroll Inc. is a risk management firm hired by the City of San Diego in February 2005 to analyze conflicting pension investigative reports by the law firm of Vinson & Elkins and the San Diego City Attorney. In a similar action, the City Attorney is investigating claims for payment made by the San Diego City Employees Retirement Board to the City for pension payments. Both actions are alleged violations of the False Claims Act, which mandates an investigation by California law.

July 7, 2006: Sharper Image Prosecuted for Faulty Breath Alcohol Testers

Customers using a Digital Breath Alcohol Testers are entitled to a full refund by Sharper Image, which admitted no wrongdoing in a lawsuit brought by City Attorney Michael Aguirre, along with the Office of the Monterey District Attorney. As part of the settlement, a civil penalty of \$100,000 was imposed with an estimated \$1,200,000 in restitution costs. The testers were consistently inaccurate in their measurement of blood alcohol levels.

July 3, 2006: Mt. Soledad Cross Removal Suspended by Supreme Court

Efforts by the City Attorney's Office to preserve the cross atop the Mt. Soledad war memorial, were given a boost when U.S. Supreme Court Justice Anthony M. Kennedy suspended a federal court's ruling to remove the cross by August 1. Kennedy also issued a brief opinion possibly indicating that the Supreme Court would hear the case if efforts to preserve the memorial were thwarted by lower courts. The City Attorney's legal action was in response to 76% of voters approving Proposition A in July, 2005 which enacted a land transfer to the federal government in order to preserve the war memorial.

June 15, 2006: False Advertising Case Settled for \$1 million

The City Attorney's Office, the California Attorney General's Office and nine District Attorneys in the state settled a \$1 million consumer claim for deceptive advertising allegations regarding Cytodyne's Xenadrine RFA-1, a diet pill containing ephedra. California law prohibits advertising claims about health benefits, performance, and effectiveness of any weight-loss product unless the claim is true and is backed up with scientific proof.

June 6, 2006: Rocky De La Fuente Multi-Million Dollar Claim Against City Thrown Out

The City Attorney and Mayor Jerry Sanders jointly announce a tentative ruling by the California Fourth Court of Appeals that threw out the \$94.5 million verdict against the City by developer Roque De La Fuente. If the tentative ruling stands, a new trial will be held on the \$29.2 million breach of agreement claim that De La Fuente filed against the City.

May 16, 2006: City Settled with FAX Company for Violations of Federal Law

City Attorney Michael Aguirre and City Councilmember Donna Frye announced a major settlement of the City's lawsuit against the president of Fax.Com Inc. In December 2003, the City Attorney's Office sued the corporation and its officers for violations of the Telephone Consumer Protection Act that protects consumers against unsolicited faxed advertisements. Between January 2003 and December 2003, the company faxed hundreds of junk advertisements to City-owned fax machines. The owner agreed to a stipulated judgment against him personally in the amount of \$428,000.

May 11, 2006: Settlement Against Maker of AbGONE Diet Pill

The City Attorney's Consumer Environmental Protection Unit, in conjunction with the District Attorneys of Napa, Orange, Sonoma and Solano counties, obtained a \$275,000 settlement in a consumer protection action against Suarez Corporation Industries (SCI), sellers of the widely distributed AbGONE diet product, which contains lead. The case also alleged that SCI engaged in false advertising relating to weight loss claims made in newspaper ads, on the Internet and on the product label.

May 3, 2006: Uptown Motel Fined after Investigation Uncovered Drug and Prostitution

A complaint filed by prosecutors in the City Attorney's Drug Abatement Response Team (DART), alleged that the motel managers at The Welcome Inn Motel actively encouraged drug and prostitution activity. In particular, a year-long undercover operation by the San Diego Police Department documented motel management facilitating narcotic sales with known drug dealers and prostitution activity with known johns on the motel premises. DART obtained a Permanent Injunction against the motel owners, which required them to maintain uniformed on-site security, properly screen all employees, hire new managers, install

security cameras and fencing around the premises, and pay \$25,000 in civil penalties.

April 13, 2006: Interim Report #8 Issued Regarding Kroll's Breach of Duties Owed to the City of San Diego

Interim Report #8 outlined the role of Kroll Inc., a risk management firm hired to analyze and compare findings of Vinson & Elkins, LLP and findings of the City Attorney in investigations into the pension fund crisis. Kroll, calling itself the Audit Committee, along with the law firm Willkie Farr & Gallagher has spent more \$20 million of the taxpayer's money and has yet to issue a report, consequently holding up the City's 2003 certified audit by outside auditor KPMG.

March 30, 2006: Charity Leaders Pleaded Guilty to Selling Food Bank Donations

The pastor of the church, Iglesia Apostolica Fuente De Vida, pleaded guilty to one count of grand theft, one count of forgery, and one count of filing false sales tax returns in conjunction with his illegal sale at a swap meet of food donated to the San Diego Food Bank.

March 15, 2006: Owner of Rat-infested San Ysidro Motel Settled Civil Lawsuit

The owner of the Valli-Hi Motor Motel in San Ysidro, whose property was infested with rats, was ordered to pay significant civil penalties and relocation costs for motel residents as part of a civil settlement filed by the City Attorney's Code Enforcement Unit. Poor property management, combined with years of deferred maintenance and neglect, resulted in fire code and electrical violations, infestation of rats, and substandard conditions in the rooms. The settlement required the owner to immediately deposit \$55,000 in a trust account and relocate approximately 35 long term residents.

February 21, 2006: City Recovered \$550,000 from Debtors

More than \$550,000 in payments from delinquent accounts has been recovered by the City Collections Division and the City Attorney's Revenue & Recovery Civil Division Unit as the result of campaign to recover unpaid debt. Last November, the unpaid debt to the City amounted to more than \$56 million from delinquent businesses taxes, damage to City property, rent or fees for use of City property, parking tickets, water and sewer bills, and fire and police services.

January 25, 2006: Auction Fraud Scammer Sentenced and Banned from Internet

A criminal case filed by the City Attorney's Consumer and Environmental Protection Unit was settled in San Diego Superior Court as the owner of MyWatchStore pleaded guilty to over \$25,000 of fraudulent sales on the Internet. The offender was ordered to pay \$25,451.45 in victim restitution, serve three

years probation, pay a \$100 restitution fine, and was banned from buying or selling goods on the Internet for three years.

December 21, 2005: City Attorney Released Report on Financial Internal Controls of the City of San Diego

The City Attorney released the *City Attorney Report on Financial Internal Controls of the City of San Diego*, which found that poor financial controls have been in place for many years. Also released was the *Report on Status of Retention of Outside Legal Counsel for Fiscal Years 2005 and 2006*.

December 6, 2005: Interim Report #7 Issued Regarding SDCERS' Attorney-Client Privilege Documents Released Under Federal Court Order

Interim Report #7 detailed new evidence illustrating that trustees of the SDCERS Board

used their position to boost pension benefits, including their individual benefit packages with knowledge that approving the deal would jeopardize the financial stability of the trust. Evidence in this report showed that the executive staff of SDCERS knowingly withheld information from the public, disregarding financial disclosure requirements.

December 1, 2005: \$100 million Lawsuit Filed Against Lawyers and Accountants Who Performed Work on the City Bond Offerings

The City Attorney announced the filing of a \$100 million malpractice lawsuit against lawyers and accountants who were hired by the City to provide advice and work in connection with the City's bond offerings that were made between 1996 and 2003. The City's lawsuit sought compensatory damages, punitive damages (for intentional misconduct) and the return of hundreds of thousands of dollars paid to these professionals over the years.

December 1, 2005: Condo Conversion Impact Required

The City Attorney advised the City to comply with California Environmental Quality Act (CEQA) process in order to assess the impacts of condominium conversions in San Diego. He also held a public hearing on the impact to individuals and neighborhoods. In an 18-month period between February 1, 2004 and June 28, 2005, the City received applications to convert 11,422 rental units to condominiums.

November. 2, 2005: City Attorney Honored

City Attorney Michael Aguirre was one of the first recipients of the "Light of Day" award for his efforts to increase government transparency and accountability. The award was presented by the Adler Foundation and Californians Aware.

October 12, 2005: Lawsuit Against Shell Oil Settled for \$10.75 million

The City Attorney's Consumer and Environmental Protection Unit and the County Environmental Health Dept. announced a \$10.75 million settlement with Shell Oil

Company over environmental and health violations at San Diego gasoline stations. Over 2,200 violations were found during routine inspections.

September 29, 2005: Department of Justice \$200,000 Grant Received

The City Attorney's Neighborhood Prosecution Unit (NPU), along with the San Diego Police Department, obtained a \$200,000 U. S. Department of Justice grant to fund the Beach Area Community Court, where offenders are required to participate in a community impact panel and are assigned community service.

September 29, 2005: Stereo Warehouse Owners Charged with Unfair Business Practices

The San Diego City Attorney and District Attorney filed a consumer protection action against three owners of the Stereo Warehouse and Stereo 1 Warehouse for false advertising and unfair business practices. The year- long, joint undercover investigation focused on advertised prices and the offer of free installation. Charges stated that installation was not free because consumers were routinely charged for additional parts, and the advertised prices were rarely, if ever given, to consumers.

September 27, 2005: City Attorney Given Green Light to Negotiate with SEC

The San Diego City Council gave the go-ahead to the City Attorney to begin settlement negotiations with the Securities and Exchange Commission (SEC) that could bring to a close the federal agency's 19-month-long investigation of the City's securities disclosure practices. The City Council vote was unanimous.

September 19, 2005: City Attorney Interim Report #1 on Wastewater

The City Attorney's Office released the results of an investigation that found City officials maintained a sewer rate structure that overcharged City of San Diego residents. The action resulted in more than \$120 million in overcharges to San Diego households from 1998 to 2004 and lower rates for large commercial users of the system. The report also documented that San Diego City officials failed to disclose material facts in connection with the offer and sale of sewer revenue bonds, including the fact that the City's wastewater rate structure was not in compliance with federal or state laws.

August 25, 2005: Veterans Scammer Sentenced to Jail

Under the guise of operating the California Veteran's Employment Center, a local man bilked \$80,000 in "donations" from more than 1,500 donors, allegedly for local homeless veterans. After a joint investigation by the City Attorney's Consumer and Environmental Protection Unit and the San Diego Office of the U.S. Department of Veterans Affairs Office of Inspector General (VA-OIG), the defendant pleaded guilty to three counts of grand theft and three counts of telephone solicitation fraud.

August 18, 2005: Fish Poachers Convicted and Sentenced

Two men caught fishing illegally in the La Jolla Ecological Reserve were sentenced after pleading guilty to California Fish and Game Code violations. The men, who speared and captured a protected fish in full view of the City of San Diego lifeguards, were barred from fishing in the waters off San Diego for three years, and were ordered to forfeit all their dive gear, including a sophisticated diving computer which had been seized by the California Department of Fish and Game.

August 17, 2005: Consumer Alert-Chiropractor Licensed

The City Attorney and District Attorney filed criminal charges against a former massage business owner for unlicensed chiropractic services and for falsely advertising himself as a doctor. The offender pleaded guilty to a misdemeanor charge for falsely calling himself "Dr." on his business cards when he was not a licensed physician or surgeon. The case was prosecuted by the City Attorney's Consumer and Environmental Protection Unit.

August 16, 2005: City Attorney 15-Point Plan

City Attorney Michael Aguirre released a fifteen-point recovery plan to resolve the City's legal, accounting and financial crisis. It was intended to move the City forward simultaneously on several fronts while Kroll Inc. (the Audit Committee) completed its work. Included in the plan is a proposed Consent Decree with the SEC, the admission of financial misstatements by City employees, completion of the 2003 audit, and the rollback of illegal pension benefits.

June 21, 2005: Interim Report #6 Issued Regarding the San Diego City Employees' Retirement System Funding Scheme

Interim Report #6 identifies the impacts of Manager's Proposal I in 1996 and Manager's Proposal II in 2002. These "rate stabilization" proposals were brought by the respective City Managers to the City Councilmembers and passed containing pension underfunding schemes that created illegal liabilities and illegally raised pension benefits, violating the City Charter and California state law.

June 6, 2005: Ocean Beach Offender Jailed and Ordered to Stay Away

A dangerous and chronic criminal offender was convicted and ordered to stay away from the entire Ocean Beach community as a condition of his three-year probation. The offender had a significant criminal history that plagued the Ocean Beach community for years. The Ocean Beach community worked closely with the San Diego Police Department's Western Division, the Police Department's Graffiti Strike Force, and the City Attorney's Neighborhood Prosecution Unit to remove the menace from the community.

May 31, 2005: Court Ordered North Park Bar Owner to Shut Down

The Slip Inn Bar was shut down for maintaining a public nuisance by permitting narcotic activity to occur on the property. A permanent injunction was ordered by the Superior Court. The case was filed as a result of the joint efforts by City

Attorney Drug Abatement Response Team (DART) prosecutors, the San Diego Police Department's Narcotics Unit and the California State Department of Alcohol Beverage Control (ABC). The Permanent Injunction was the culmination of a five-month undercover narcotics operation conducted by San Diego Police narcotic detectives and an ABC investigator.

May 19, 2005: Interim Report #5 Issued Regarding the Legal Status of the Elected Officers Retirement Program

In Interim Report #5 regarding the legal status of the elected officers retirement program, the City Attorney determined that the City Council violated the Charter's pension vesting rules when members passed an ordinance that granted benefits to elected officials who had not served for 10 years and who had not reached age 62.

May 9, 2005: Interim Report #4 Issued Regarding Additional Funding for Outside Professionals Reviewing Alleged Illegal Acts

In Interim Report # 4 regarding additional funding for outside professionals reviewing alleged illegal acts, the City Attorney questioned whether Kroll Inc. could finish its work in an economical and timely manner and recommended that the Council not approve any additional funds for the Kroll until a complete review of the Committee's scope of work had been conducted.

April 14, 2005: Pacific Beach Bar Owner Paid Civil Penalties

The owners of Margarita Rocks, a local Pacific Beach Bar, have been placed under a court order to reduce music and noise levels, maintain a "Do Not Admit" list of problem individuals, support designated driver and taxi-ride programs, increase security staffing, and take extra precautions to avoid over-serving of alcohol to patrons. The bar owners were also assessed civil penalties in the amount of \$10,000. It is the first civil action taken against a nightclub in Pacific Beach by the City Attorney's DART prosecutors and the San Diego Police Department Northern Division.

April 9, 2005: Interim Report #3 Issued Regarding Violations of State and Local Laws as Related to the SDCERS Pension Fund

In Interim Report # 3 regarding violations of State and local laws as related to the SDCERS Pension Fund, the City Attorney concluded that City officials violated the California Constitution, State law, the San Diego City Charter, and the San Diego Municipal Code in causing the underfunding of the San Diego City Employees' Retirement System.

March 29, 2005: Prosecutors Reached Two Settlements Worth \$650,000 with Wal-Mart And Walgreens

In cooperative efforts between the Federal Trade Commission, California's Department of Health Services, Food & Drug Branch (FDB), Napa County District Attorney, Solano County District Attorney, and the San Diego City Attorney's Office, Wal-Mart and Walgreens were ordered to pay fines and restitution in a

settlement. The retailers were charged with illegally selling the AbEnergizer, a misbranded and unapproved medical device.

March 9, 2005: Pacific Beach Portraits Owners Convicted

Wedding photography and bridal shop owners pleaded guilty to multiple counts of grand theft, false advertising and vandalism in a wedding photography scam which left 61 couples without photographs of their special day. Prosecuted by the City Attorney's Consumer and Environmental Protection Unit, the married couple were jailed for 271 days, paid a \$1,000 fine and were order to pay up to \$50,000 restitution to the scammed brides and grooms.

March 8, 2005: City Attorney To Provide Background Reviews

The Office of the City Attorney announced that they will begin providing background reviews of City nominees to major boards and commissions such as the Port Authority, Water Authority, Qualcomm Stadium Advisory Board and the Ethics Commission. The review will include a thorough check of the accuracy of nominee's resume, educational credentials, prior employment, and professional experience.

March 3, 2005: Contractor Paid City \$4.95 million in Fines

The City Attorney's Construction Litigation Team recovered \$4.95 million for the City of San Diego regarding defective work by a contractor of the Rose Canyon Trunk Sewer Project.

February 9, 2005: Interim Report #2 Issued Regarding Abuse, Illegal Acts and Fraud by City of San Diego Officials

In Interim Report #2 regarding abuse, illegal acts, and fraud by City of San Diego officials, the City Attorney revealed substantial evidence consistent with a finding that the Mayor and Council authorized the issuance of a City bond offering and related disclosure documents that they knew to be false.

February 4, 2005: Code Enforcement Violators Held Accountable

The City Attorney presented checks to two community agencies from defendants found guilty of harming neighborhoods with public nuisance and housing violations. The Ocean Beach Community Development Corporation was awarded \$8,000 and the San Diego Rescue Mission received \$5,000. Both checks were ordered by the Court as creative sentencing requirements aimed at restoring the community harmed by those violations.

January 24, 2005: City Attorney Prevailed in Appeal to Have De La Fuente Liability Paid by Insurance

City Attorney Michael Aguirre won a ruling by the Ninth Circuit Court of Appeals that the City's insurance company, American International Group (AIG) must pay attorneys fees and mostly likely damages in the \$94.5 million De La Fuente lawsuit settlement, unburdening the City budget of this obligation.

January 14, 2005: Interim Report #1 Issued Regarding Possible Abuse, Fraud and Illegal Acts by SD City Officials and Employees

The City Attorney released *Interim Report #1 on Possible Abuse, Fraud and Illegal Acts by SD City Officials and Employees* which investigated and made public the financial disclosure irregularities of the 2002 final report of the Mayor's Blue Ribbon Committee. The Blue Ribbon Committee vastly understated the severity of the City's Pension Fund liability by 318% or \$125 million

December 16, 2004: City Attorney Issued Legal Opinion on Disputed Bubble Ballots

City Attorney Michael Aguirre issued a legal opinion related to the disputed ballots in the San Diego Mayor's race. Under state law, he opined, ballots that contained "write-in" candidate Donna Frye's name were excluded if the bubble was not filled in.

December 6, 2004: Michael J. Aguirre Inaugural Address

The City Attorney took office, pledging to "make politics more responsive and justice more achievable." He acted to restore the Criminal Division's Public Integrity Section to "investigate and prosecute violations of laws, conflicts of interest, and criminal waste, fraud and abuse of city resources," and pledged not to "remain on the sidelines and watch San Diego slide deeper into the financial abyss." The City Attorney committed to working to restore public confidence and create a "citizen friendly" office.